United Union of Roofers, Waterproofers & Allied Workers, Local 189 *and* Northwest Foam Systems, Inc. and Carpenters Local No. 286, United Brotherhood of Carpenters & Joiners of America, AFL-CIO. Case 19-CD-393

February 12, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Northwest Foam Systems, Inc., herein called the Employer, alleging that United Union of Roofers, Waterproofers & Allied Workers, Local 189, herein called Roofers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by Roofers rather than to employees represented by Carpenters Local No. 286, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, herein called Carpenters.

Pursuant to notice, a hearing was held on August 26, 1981, before Hearing Officer Melvin R. Kang. The Roofers did not appear for the hearing and the hearing went forward without it. The Employer and Carpenters appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. No briefs were filed by the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties present stipulated, and we find, that the Employer is a State of Montana corporation with an office and place of business in Great Falls, Montana, where it is engaged in the business of applying urethane insulation on buildings and roofs. It was further stipulated, and we find, that based on the period from May to August 1981 the Employer will realize projected gross revenue in excess of $500,000 and that during the past 3 months it purchased goods valued in excess of $50,000 from suppliers located outside the State of Montana. On the basis of the foregoing, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties present stipulated, and we find, that the Roofers and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

Early in 1981, the Employer contracted with the Cascade County government to perform construction work at the Cascade County Convalescent Hospital and Cascade County Courthouse Annex. James H. Rohlk, the Employer's owner and president, testified that this building construction does not allow for internal application of insulation. Thus, the specifications written by the county required that the insulation would "be applied exterior . . ." and coated with an ultraviolet protection over the urethane foam that was applied.

On or about May 1, 1981, the Employer and the Carpenters entered into a collective-bargaining agreement covering the Employer's employees. The recognition clause of the agreement states:

> *Section 1.* The Employer recognizes the Union as the sole and exclusive bargaining agent for all employees performing bargaining unit work historically covered by this Agreement and covered by occupational and geographical jurisdiction of this Union. The coverage of this Agreement shall be all bargaining unit work historically covered by this Agreement and normally performed by insulators over which the Employer has control. . . .

At or about the same time the Employer assigned all urethane insulating foam application tasks to employees who are members of and represented by the Carpenters.

On or about May 4, 1981, an agent of the Roofers demanded that such work be assigned to employees who are members of that labor organization rather than to those represented by the Carpenters. On or about July 28, 1981, the Roofers picketed the Employer at its jobsites at the Cascade County Convalescent Hospital and at the Cascade County Courthouse Annex. The picket signs bore the following legend:

Jurisdictional Dispute with Carpenters Local No. 286 Roofers Local 189

B. *The Work in Dispute*

The disputed work involves the assignment of all tasks associated with the application of urethane insulating foam at the Employer's jobsites at the Cascade County Convalescent Hospital and the Cascade County Courthouse Annex.

C. *Contentions of the Parties*

The Employer and the Carpenters, at the hearing, basically took the same position.[1] Thus, they contend that the Employer has assigned the disputed work in accordance with their contract. In addition, they contend that the disputed work is essentially the application of insulating materials and that this work has traditionally been within the jurisdiction of the Carpenters. Finally, they contend that other employers in the area performing the same work also have contracts with the Carpenters.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

The record reveals that on or about May 4, 1981, the Roofers agents and representatives demanded that the work in dispute be assigned to employees who are represented by the Roofers rather than employees who are represented by the Carpenters. On or about July 28, 1981, the Roofers picketed the Employer at its jobsites at the Cascade County Convalescent Hospital and the Cascade County Courthouse Annex with signs stating the existence of a jurisdictional dispute between Carpenters Local No. 286 and Roofers Local 189. At the hearing, the Carpenters representative stated that it would continue to claim the disputed work. The record contains no evidence that the Roofers will not also continue to claim the disputed work. The record does, however, contain evidence that employees of other employers expressed reluctance to cross the picket line and that the picketing caused a delay in the expected performance date or completion date of the contract between the Employer and the county government. On the basis of the foregoing, we find there is reasonable cause to believe that the picketing by the Roofers violated Section 8(b)(4)(D) of the Act. Further, the parties present at the hearing stipulated that there does not exist any agreed-upon method for the voluntary adjustment of the dispute. Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[3]

The following factors are relevant in the determination of the dispute before us.

1. Collective-bargaining agreement

The Employer and the Carpenters are signatories to a contract which contains a provision which covers the work in dispute. The Employer has no collective-bargaining agreement with the Roofers. We therefore find that this factor favors awarding the disputed work to the employees represented by the Carpenters.

2. Company practice

James H. Rohlk, the Employer's owner and president, conceded that the type of insulation involved in this case is novel and unique and, at the time of the hearing, had been in the area for a brief period of time. Accordingly, we find that there is insufficient evidence in the record to favor an award of the disputed work to either group of employees on the basis of the Employer's past practice.

3. Relative skills

The evidence in the record regarding skills does not favor an award to either group of employees.

4. Employer preference

Since on or about May 1, 1981, the Employer has used employees represented by the Carpenters to perform the disputed work. It is satisfied with the results of its assignment and prefers that employees represented by the Carpenters continue to do this work. Thus, the Employer's preference favors an assignment of the disputed work to the employees represented by the Carpenters.

[1] As noted previously, neither party filed a brief.

[2] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[3] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

5. Area practice

Although it was contended that the area employers generally use carpenters to perform insulation work, the Employer's president also stated that the type of insulation herein is novel and unique to the area. Accordingly, as the record does not reveal a clear area practice, we find that area practice is not a factor favoring either group of employees.

Conclusion

While the record as a whole does not contain evidence of many of the factors we deem relevant in awarding disputed work, it does contain evidence that the Employer assigned the disputed work to the employees represented by the Carpenters on the basis of its collective-bargaining agreement with that labor organization. Further, the record reveals that the Employer is satisfied with the performance of the carpenters and prefers that they continue to perform the work in dispute. On the basis of the foregoing, we conclude that the employees who are represented by the Carpenters are entitled to perform the work in dispute and we shall therefore award the work in dispute to them. In making this determination, we are awarding the disputed work to employees who are represented by the Carpenters, but not to that Union or its members. Additionally, the scope of our award is limited to the controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Northwest Foam Systems, Inc., who are represented by Carpenters Local No. 286, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform all tasks associated with the application of urethane insulating foam at the Employer's jobsites at the Cascade County Convalescent Hospital and the Cascade County Courthouse Annex.

2. United Union of Roofers, Waterproofers & Allied Workers, Local 189, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Northwest Foam Systems, Inc., to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Union of Roofers, Waterproofers & Allied Workers, Local 189, shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.